

Testimony of Mikal Thomsen

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Federal-State Universal Service Joint Board En Banc Hearing

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INTRODUCTION

Good afternoon. My name is Mikal Thomsen. I am President of Western Wireless Corporation, the largest rural wireless service provider in the United States. I appreciate the opportunity to share my thoughts and insights on how the goal of preserving and advancing universal service is furthered through a competitive universal service system. Western Wireless was the first wireless carrier in the nation to be designated as an Eligible Telecommunications Carrier or ETC in areas served by rural telephone companies. Starting in 1998, the Company began seeking designation as an ETC and we are now the largest competitive ETC in the nation, eligible for universal service funding in 14 states and on the Pine Ridge Indian reservation. My testimony is based upon in-depth knowledge of the eligibility and funding issues the Joint Board is reviewing.

RURAL CONSUMERS: THE INTENDED BENEFICIARIES OF USF POLICIES

It is clear based upon the record in this proceeding that different industry groups have different perspectives on what changes, if any, need to be made to the current universal service system. It is certainly no surprise that incumbent local exchange carriers either want to preserve the status quo by erecting barriers to a competitive carrier's entry into the universal service market or want to completely foreclose competition in this market;

and that carriers who contribute to the universal service fund, but receive little or no support, generally seek to impose artificial or discriminatory limitations on the growth of the fund. Each has vested interests in keeping competitive carriers from receiving any universal service funding. What are the interests of competitive carriers? It is simply non-discriminatory access to universal service funding. Who would benefit from a policy of non-discriminatory access to universal service funding? State commissions have recognized that consumers have been and continue to be the beneficiaries of a competitive universal service system.

As the Federal-State Universal Service Joint Board considers reform of the current universal service system, the questions that need to be asked are “what will be the impact of any policy change on rural consumers?” and “will any policy change lead to more or better universal service?” With these questions in mind, my testimony addresses the universal service funding and eligibility issues before the Joint Board.

Universal Service: A Consumer-Focused Policy

Some would have this Joint Board believe that universal service is an entitlement belonging to the telephone companies, that universal service funding should be provided exclusively to incumbent carriers, and that there is no role for competitive carriers in the universal service market. Beyond that hyperbole, there is no support for these anti-competitive positions. In fact, quite the opposite is true. The law not only fully supports, but also requires the establishment of a competitive universal service system. Specifically, the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (“Act”), provides for the designation of additional ETCs and provides the

Joint Board with direction on how to craft policies for the preservation and advancement of universal service (see Section 254(b)(3) of the Act):

The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles: . . .

(3) ACCESS IN RURAL AND HIGH COST AREAS.—Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Clearly, the focus of the Joint Board’s consideration of universal service reform must be on rural consumers and what policies will ensure that these consumers have access to basic and advanced services that are reasonably comparable to those available in urban areas. Until the Telecommunications Act of 1996 (“1996 Act”) opened up the universal service market to competition, universal telephone service was delivered through a complex web of implicit and explicit support mechanisms available only to the incumbent local exchange carriers, which ultimately left rural consumers hostage to the offerings, or lack thereof, of the incumbent carriers. Now, with competition emerging in the universal service market, for the first time, rural consumers are beginning to realize the benefits of a competitive telecommunications market promised by the 1996 Act. Where competition does not yet exist, rural consumers remain captive customers of the incumbent carriers, often resulting in a service offering that is not “reasonably comparable to those services provided in urban areas.” A competitive universal service system will change that.

Competition is the means by which rural consumers can obtain service reasonably comparable to those services provided in urban areas. Over the last few years, as competition has developed in the universal service market, it has become clear that competition preserves and advances universal service by:

- (1) *Making service available in areas previously unserved by incumbent carriers.* As many state commissions know, there are numerous areas within rural states where consumers do not have access to affordable landline service. On the Pine Ridge Indian reservation, Western Wireless' competitive universal service offering has made telephone service available to many tribal members for the first time, resulting in telephone penetration rates increasing from approximately 25% to over 75%. In Reese River Valley, Nevada, Western Wireless has provided telephone service for the last 10 years to residents not served by the landline carrier. In Montana, Western Wireless serves many rural consumers that do not have access to landline telephone service. All of these examples demonstrate how universal service is advanced by competition.
- (2) *Providing new and innovative services that are reasonably comparable to those services provided in urban areas.* Western Wireless' entry into the local telephone market has not only resulted in new and innovative services being available to rural consumers, but has also forced the incumbent carrier to offer better service. For example, in Regent, North Dakota, after Western Wireless entered the market and began offering new services previously unavailable, the incumbent carrier responded by offering an expanded local calling area, lower rates, and data services.
- (3) *Facilitating access to advanced services.* Many rural areas do not have access to advanced services and are unlikely to be served in the future by landline carriers due to wireline limitations. Competition provides the only hope to bridge this "digital divide." Recently, Western Wireless demonstrated the capabilities of wireless service to bridge the digital divide in the small rural town of Terry, Montana, where the Company deployed advanced high-speed digital technology with the capability to offer data speeds of more than 150 Kbps.

Incumbent carriers opposition to a competitive universal service system is rooted in their attempt to maintain control over the universal service market, not their interest in preserving and advancing universal service to the advantage of rural consumers. In

their attempt to monopolize the universal service market, the incumbent carriers have lost sight of the fact that universal service policies are intended to benefit consumers, not incumbent telephone companies. Unable to refute the benefits of competition, incumbent carriers have taken aim at their competition and are making unfounded allegations of “financial windfall, cream skimming, and inferior service offerings.” A look behind these allegations reveals a much different story, one that puts into question the practices and the credibility of the incumbent carriers.

Financial Windfall. The argument that competitive carriers are realizing a financial windfall by receiving support based upon an incumbent carrier’s costs does not withstand scrutiny. Incumbent carriers essentially receive full cost recovery, whereas competitive carriers receive support based upon their market penetration. For example, if an incumbent carrier receives \$1000 in support for 100 lines of service and the new entrant competitive carrier has 10 lines of service, then the competitive carrier receives only \$10 per line or \$100, but yet must (according to the rules) have a network capable of serving all consumers throughout the entire designated service area. It is hard to imagine a scenario where the competitive carrier is receiving a financial windfall. The more likely financial windfall is by the incumbent carriers whose rate-of-return regulation -- with little or no scrutiny of costs -- presents a fertile ground for financial gerrymandering and thus needs to be reviewed by regulators. Moreover, the incumbent’s support is not diminished at all when it loses a customer. This sounds more like Soviet-style economics than rationale economic policy. [In fact, some state universal service programs provide *additional* support to carriers who can show “financial harm” through lost customers. The Texas universal service support mechanism is an example.

Cream Skimming. The argument that competitive carriers are “cream skimming” by serving the low-cost customers and not the high-cost customers is quite simply advocacy based upon hyperbole and not the facts. All universal service providers have a legal obligation to serve throughout their designated service areas. Western Wireless is not aware of any case alleged or proven that a competitive carrier is “cream skimming.” The opposite, however, cannot be said of the incumbent carriers. There are countless examples where rural consumers cannot obtain landline telephone service without paying exorbitant connection charges. A recent survey conducted by Western Wireless in Montana revealed that several rural consumers would have to pay between \$5,000.00 and \$20,000.00 to obtain landline telephone service, which is typical based upon incumbent telephone company line extension policies. So, who is cream skimming?

Inferior Service Offerings. The incumbent carriers often argue that wireless service is inferior to wireline service, but fail to recognize or acknowledge that consumers are increasingly turning to wireless service as their primary means of communications. Unwilling to let consumers decide which service offering best meets their needs, incumbent carriers seek to impose regulations on competitive carriers that would effectively nullify any competitive differentiation between service offerings. The Joint Board and FCC should dismiss these anti-competitive arguments to promote incumbent carrier regulation on a competitive carrier.

The ETC Process: The Record Is Clear – the FCC and State Commissions Have Conducted A Thorough Analysis of Whether the Public Interest Is Served Prior To Designating Additional ETCs In Areas Served By Rural Telephone Companies

The facts speak louder than the myths being told by the rural telephone companies:

- Contested evidentiary hearings were conducted on almost all of Western Wireless' ETC applications, along with discovery, oral and written testimony, direct and cross-examination of witnesses, documentary evidence, oral arguments and pre and post hearing briefings.
- The average length of state commission ETC proceedings was 21 months.
- State commissions considered whether the public interest would be served by the designation of an additional ETC and provided all parties every opportunity throughout the contested evidentiary process for the presentation of evidence on the public interest; the ILECs, in fact, presented expert witnesses and other evidence to support their position that the public interest would not be served by the designation of an additional ETC, but state commissions did not find such evidence convincing.
- State courts have generally upheld state commission decisions granting ETC status to competitive carriers.

Unable to counter these facts, certain incumbent carriers and their associations rely on 'rural myths' such as the following:

- CenturyTel, Inc stated in its Comments that, "Indeed, it is remarkable how easy it has been for a competitive telecommunications carrier to obtain federal high-cost funds" and "CETCs receive little scrutiny at the initial designation stage."
- OPASTCO opined that, "The current practice of liberally designating additional ETCs in the service areas of rural telephone companies is not sustainable . . ."

Clearly, the rural telephone companies and their associations have taken great liberty with the facts in trying to paint a picture of the designation process in crisis. Contrary to these claims, the cost of prosecuting an ETC application, the uncertainty of the regulatory process, and the length of time to obtain a final ruling have, and continue to be, significant barriers to entry into the universal service market. For the rural telephone companies to argue that the process is "easy" or that state commissions have "liberally" designated CETCs, is disingenuous, especially when one considers the undisputable fact that the telephone companies were granted ETC status without any debate.

State commissions have carefully reviewed applications and concluded that the public interest is served by the designation of additional ETCs in areas served by rural telephone companies. The 1996 Act establishes the requirements for the designation of additional ETCs. Specifically, Section 214(e)(2) of the Act provides that:

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

Consistent with this statutory command, the Federal Communications Commission established the services that are supported by federal universal service support mechanisms, State commissions have carefully considered applications for eligible telecommunications carrier status, and the courts have either overturned or affirmed decisions that run afoul of the 1996 Act or implementing regulations. I will focus my comments on the state commissions' review of ETC applications, which have nearly unanimously found that the public interest is served by the designation of Western Wireless as an additional ETC in areas served by rural telephone companies. Specifically:

- The Minnesota commission acknowledged that Congress and the Minnesota Legislature were "deeply committed to opening local markets to competition," but that it was responsible under Section 214(e)(2) to determine on a case-by-case basis whether some rural telephone company areas could not sustain or benefit from competition. The state commission first looked to whether Western

Wireless' designation would benefit consumers in rural Minnesota, and determined that Western Wireless would bring reliability, high service quality, affordability, customer choice and new and innovative services.

- The Kansas Commission stated that the clear and unmistakable public policy imperative from both the federal and state legislatures is that competition is a goal, even in rural areas. Arguments were made that competition is not in the public interest in any rural telephone company service area because it may jeopardize universal service. However, the commission concluded that no articulable facts had been presented to reach the broad conclusion that competition and universal service are never able to exist together in rural areas. The Commission did not accept the assertion that designating additional ETCs in rural areas will necessarily threaten universal service. The commission found that the benefits of competition and customer choice should be available to Kansans living in non-rural areas and that general concerns and speculation are not sufficient justification for adopting a policy that would result in benefits and services that are available to other Kansans not also being available to rural telephone customers. The Commission concluded that the rural telephone companies did not demonstrate any adverse impacts and that competition should not be withheld from customers in rural areas.
- The Nebraska Commission concluded “the public interest requirement for designation of an ETC in rural areas is not meant as a protective barrier for rural telephone companies but rather as a method for ensuring that rural areas receive the same benefits from competition as their urban neighbors.”
- The South Dakota Commission found that Western Wireless’ provision of “universal service throughout the study areas will be beneficial to the public.”
- The North Dakota Commission summed things up this way: “The Commission finds that designating Western as an additional ETC in the study area of each rural telephone company will advance universal service by bringing new telecommunications services to North Dakota consumers, by bringing competitive choice for universal services to residential customers, by offering a highly reliable and top quality universal service offering, and by providing cost effective means for customers in remote areas to acquire universal services.”

The Joint Board should reject suggestions to impose service requirements beyond the list of covered services. In an attempt to maintain their stranglehold of the universal service market, incumbent carriers argue that competitive ETCs should be required to provide comparable services (including local dialing plans) to those that the incumbent is required to offer. Interestingly, the FCC just two weeks ago chose not to expand the

definition of universal service. There can be no possible justification for requiring competitive entrants to “mirror” the incumbent in terms of services offered. A competitive carrier must be able to distinguish itself in the marketplace from the incumbent in order to succeed, which it does by its rates, terms and conditions, service offerings, and service availability. Incumbent carriers, which have market power, and competitive carriers, which do not, should not be subject to the same regulations aimed at controlling incumbent market power. Examples of such obligations are rate and tariffing requirements, an “equal access” mandate, and consumer protection standards applied to carriers that historically faced no competition and therefore had no natural market incentive to address consumers’ needs. It is unnecessary to impose requirements designed to regulate monopoly providers on competitors because market forces achieve the same results: if a competitive carrier’s service quality is sub par or its prices are too high, consumers will not use it. Consumers who are dissatisfied with a wireless carrier’s service will switch carriers. The requirements with which universal service recipients must comply – those contained in sections 214(e) and 254 – already apply with equal force to all carriers, incumbents and competitors alike. The current state of the law preserves competitive neutrality; imposing incumbent carrier regulations on competitive entrants would have the opposite effect.

Thus, as State commissions have recognized in the ETC proceedings, the market itself ensures that competitive entrants will provide service of a quality that is acceptable to consumers. These factors should leave no doubt that competitive ETCs already have sufficient incentive to comply with the standards that accompany universal service support and to provide quality service to their customers.

Universal Service Support: *The Goal of Preserving and Advancing Universal Service*

Will Not Be Furthered Without A Competitive Universal Service System. Consumers in all markets should benefit from a competitive marketplace. The universal service market should be no exception. To ensure that the 1996 Act's universal service and competition goals are realized by rural consumers, the Joint Board and the FCC should recognize that:

- Since the Act became law in 1996, the FCC has undertaken significant initiatives to implement the mandates of the Act, resulting in, for the first time, the establishment of a competitive universal service market.
- We are witnessing a new paradigm shift in universal service from service to a physical location (wireline service) to connecting individuals at all times and across geography (both wireless and wireline service in competition with one another).
- Industry data confirms that mobile service is no longer just a discretionary service, but an essential service that a substantial number of consumers rely upon for their basic communications needs.
- Contrary to the unfounded allegations of the entrenched incumbent carriers and their associations, the evidence clearly shows that the growth of the federal universal service fund is not attributable to competitive ETCs.
- At issue is not only policy reform, but real people and whether they will be able to have access to the communications service they rely on, such as:
 - i. the residents of the Oglala Sioux Tribe on the Pine Ridge Indian reservation, where telephone penetration rates have significantly increased with Western Wireless' entry into the universal service market; and
 - ii. consumers in rural North and South Dakota where universal service has been "preserved and advanced" through Western Wireless' entry into the universal service, resulting in "new telecommunications services," "competitive choice for universal services to residential customers," "a highly reliable and top quality universal service offering," and a "cost effective means for customers in remote areas to acquire universal services."
- The current funding mechanism for rural telephone company areas, which is solely based on the ILECs' embedded cost structure, is incompatible with an efficient, competitively-neutral system as envisioned by the 1996 Act.

- A funding system based on an economically-efficient, forward-looking cost model would provide the proper incentives for carriers operating in a competitive universal service market.

Almost one year ago, the Washington UTC said it best when it designated RCC as an ETC in Washington, and recognized that competition is a factor in determining the public interest: “Competition alone may not be sufficient to meet the public interest test, but the benefits of competition are more than sufficient...downward pressure on prices, increased innovation, and more attention to customer service....Because of the limited opportunities for revenue in areas served by rural ILECs, there will be no competition--and no customer choice--without multiple ETCs.”

Conclusion: *The Competitive Universal Service System Is Working: Rural Consumers Are Gaining Access To Services Previously Reserved To Their Rural Counterparts.* I urge the Joint Board members to take a close look at the facts developed in this proceeding, which conclusively shows that:

- the overwhelming majority of the high-cost fund growth is due to increases in funds flowing to rate-of-return incumbent carriers, not wireless carriers;
- anti-competitive proposals, such as eliminating portability, instituting primary line restrictions, or restricting state commissions’ ability to designate ETCs, should be dismissed at contrary to the law and against the interests of rural consumers; and
- universal service reform initiatives, such as establishing a high-cost mechanism based on forward-looking costs, study area funding caps and audits of rural incumbent carriers’ rate-of-return accounting should be pursued.

Rural consumers today have begun to realize the vision of the 1996 Act’s pro-competitive mandates that extend to the universal service market. The Joint Board

should take action to further develop the emerging competitive universal service market and dismiss the anti-competitive pleas of incumbent carriers seeking only to maintain their stranglehold of the market.